

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 20, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOBBY CHARLES OWENS,

Defendant.

NO: 2:21-CR-29-RMP-1

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER RE
COMPUTER FORENSIC REVIEW
PROCEDURES

The Court has received and reviewed the Stipulated Motion Regarding Computer Forensic Review Procedures for Child Pornography Contraband filed by the parties in the above-captioned matter, ECF No. 30, and is fully advised.

GOOD CAUSE HAVING BEEN SHOWN, the Court hereby **ORDERS** that the Stipulated Motion Regarding Computer Forensic Review Procedures for Child Pornography Contraband filed by the parties, **ECF No. 30**, is **GRANTED**.

1. IT IS FURTHER ORDERED that 18 U.S.C. § 3509(m) applies to this case, and the Court is required to deny defense requests to copy, photograph,

1 duplicate, or otherwise reproduce material constituting child pornography if the
2 government makes the material reasonably available to Defendant and provides an
3 ample opportunity for the defense to examine it at a government facility. *See* 18
4 U.S.C. § 3509(m).

5 2. IT IS FURTHER ORDERED that, in order to comply with 18 U.S.C.
6 § 3509(m), and to allow Defendant the greatest opportunity to prepare an effective
7 defense in preparation for trial in this matter, the government will make a true
8 forensic, bit-by-bit E01 image of devices and media containing alleged child
9 pornography contraband at issue in the above-referenced case. The government
10 will make that forensic image reasonably available to Defendant and provide
11 ample opportunity for the defense team to examine it at a government facility in
12 Spokane, Washington. The parties may readdress the Court if there is a need for
13 additional or after-hours access during the course of litigation in the event trial or
14 motion hearings require additional forensic review.

15 3. IT IS FURTHER ORDERED that the defense forensic examination
16 will be conducted in an interview room monitored by closed-circuit television
17 (“CC-TV”), without audio feed. While the TV with non-audio feed will ensure the
18 integrity of FBI space and security of its occupants, the video feed is not of
19 sufficient detail or at an angle that would reveal defense strategy. The government
20 and its agents expressly agree that no attempt will be made to record any audio
21 from the workstation and that no attempt will be made to observe the defense

1 team's work product or computer monitor screen at any time. The defense expert
2 may review the feed to ensure that defense strategy is not being compromised at
3 any time while conducting the forensic review.

4 4. IT IS FURTHER ORDERED that the defense team¹ shall not make,
5 nor permit to be made, any copies of the alleged child pornography contraband
6 pursuant to this Protective Order and shall not remove any contraband images from
7 the government facility. The defense expert will be allowed to copy any file that is
8 not contraband and compile a report (without contraband images/videos)
9 documenting the examination on removable media at the discretion of the defense
10 expert.

11 5. IT IS FURTHER ORDERED that the designated defense expert,
12 Jennifer McCann, will leave at the government facility any equipment, including
13 hard drives, which contain child pornography contraband that is identified during
14 forensic evaluation. The parties may readdress this matter with the Court upon
15 notice that the defense intends to retain a different defense expert.

16 6. IT IS FURTHER ORDERED that for the purpose of trial, the
17 government agrees to make available a digital copy of any government trial exhibit
18 that contains contraband, which will be kept in the custody and control of the case

19 ¹ For purposes of this Protective Order, the term "defense team" refers solely to
20 Defendant's counsel of record ("defense counsel"), Defendant's designated expert
21 ("defense expert"), and a defense investigator.

1 agent. Upon reasonable notice by the defense, the case agent will also maintain for
2 trial digital copies of any proposed defense exhibit that contains contraband. If the
3 defense team intends to offer, publish, or otherwise utilize any government or
4 defense exhibit contained on the digital copy maintained by the case agent during
5 trial, the case agent shall assist the defense team in publishing or utilizing the
6 exhibit that contains contraband upon notification by the defense team.

7 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
8 Order and provide copies to counsel.

9 **DATED** May 20, 2021.

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11 *s/ Rosanna Malouf Peterson*
12 ROSANNA MALOUF PETERSON
13 United States District Judge
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